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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

REX LAKE,

Plaintiff,

vs.

KILOLO KIJAKAZI,
Acting Commissioner of Social Security,¹

Defendant.

)
) Case No.: 2:21-cv-01089-EJY

) **UNOPPOSED MOTION FOR EXTENSION OF**
) **TIME TO FILE CERTIFIED**
) **ADMINISTRATIVE RECORD AND ANSWER;**
) **DECLARATION OF JEBBY RASPUTNIS**

) **(FIRST REQUEST)**
)
)

¹ Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi should be substituted, therefore, for Andrew Saul as the defendant in this suit. No further action need be taken to continue this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1 Defendant, Kilolo Kijakazi, Acting Commissioner of Social Security (the “Commissioner”), by
2 and through her undersigned attorneys, hereby moves for a 60-day extension of time to file the Certified
3 Administrative Record (CAR) and Answer to Plaintiff’s Complaint. The CAR and Answer to Plaintiff’s
4 Complaint are due to be filed by August 16, 2021. This is the Commissioner’s first request for an
5 extension of time.

6 Defendant makes this request in good faith and for good cause, because the CAR, which must be
7 filed with the Answer and is necessary to adjudicate the case, is not yet available. The public health
8 emergency pandemic caused by COVID-19 has significantly impacted operations in the Social Security
9 Administration’s Office of Appellate Operations (OAO) in Falls Church, Virginia, which is responsible
10 for producing the CAR that must be filed with the Answer, per 42 U.S.C. §§ 405(g) and (h). As detailed
11 in the attached declaration from Jebby Rasputnis, Executive Director of the OAO, beginning mid-March
12 2020, OAO restricted physical access to the Falls Church building, which impacted the production of
13 CARs because physical access was previously required to produce CARs. OAO has since developed and
14 employed a new business process to produce CARs. Much of the difficulty in producing CARs stemmed
15 from the old process of transmitting hearing recordings to vendors for transcription, how the vendors
16 transcribed the recordings, and how the vendors provided the completed transcripts to OAO. OAO
17 changed this process by reworking how the audio files are submitted, seeking additional vendor capacity,
18 and increasing in-house transcription capacity. With these changes, OAO is now able to produce more
19 than 700 transcripts a week, a significant increase over the pre-COVID-19 average of 300–400 hearing
20 transcripts a week.

21 Despite these improvements, OAO still faces a significant backlog of cases due to the combined
22 effects of pandemic-related disruption and a marked increase in district court filings. Overall, the
23 timeframe for delivering a CAR in an individual case has improved, and the current average processing
24 time is 139 days. Because of this, OAO is making progress in its backlog of cases. At the end of January
25 2021, OAO had 11,109 pending cases. As of August 9, 2021, OAO had 3,760 pending cases,
26 representing a decrease in our backlog of more than 7,350 cases over the last seven months. OAO
continues to work on increasing productivity by collaborating with our vendors and searching out and

utilizing technological enhancements. Defendant asks this Court for its continued patience as OAO works to increase its efficiency and production of CARs, reduce the current backlog, and address rising court case filings. Counsel for Defendant further states that the Office of General Counsel (OGC) is monitoring receipt of transcripts on a daily basis and is committed to filing Answers as soon as practicable upon receipt and review of the administrative records.

Given the volume of pending cases, Defendant requests an extension in which to respond to the Complaint until October 15, 2021. If Defendant is unable to produce the certified administrative record necessary to file an Answer in accordance with this Order, Defendant shall request an additional extension prior to the due date.

On August 12, 2021, the undersigned conferred with Plaintiff's counsel, who has no opposition to the requested extension.

It is therefore respectfully requested that Defendant be granted an extension of time to file the CAR and Answer to Plaintiff's Complaint, through and including October 15, 2021.

Dated: August 13, 2021

CHRISTOPHER CHIOU
Acting United States Attorney

/s/ Daniel P. Talbert
DANIEL P. TALBERT
Special Assistant United States Attorney

OF COUNSEL:
KRYSTLE S. MCMULLAN
Assistant Regional Counsel, Region IX

IT IS SO ORDERED; provided, however, no further extensions of time will be granted.


UNITED STATES MAGISTRATE JUDGE

Dated: August 13, 2021